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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 17-IB36

August 3, 2017

VIA U.S. MAIL & EMAIL

Carol DiGiovanni
1910 Orleans Road
Arden, DE 19810
cmdigiovanni@yahoo.com

RE: July 28, 2017 FOIA Correspondence Regarding the Village of Arden

Dear Ms. DiGiovanni:

We write in response to your correspondence, received on July 28, 2017, alleging that the Village of Arden (the “Village”) violated Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”) in connection with your client’s January 28, 2017 request for records. Specifically, you allege that the Village violated FOIA by failing to provide a response to your June 28, 2017 FOIA request within fifteen (15) business days as required by 29 *Del. C.* § 10003(h)(1). We treat your correspondence as a petition (“Petition”) for a determination pursuant to 29 *Del. C.* § 10005(e) regarding whether a violation of FOIA has occurred or is about to occur. We invited the Village to submit a written response to the Petition. We received the Village’s response on July 28, 2017. We have reviewed your Petition, the Village’s response, and all subsequent correspondence received from the parties.¹ Based upon the record, it is our determination that the Village’s conduct amounted to, at most, a technical violation for which no remediation is warranted.

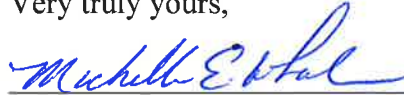
Here, the Village provided evidence that its FOIA Coordinator, Elizabeth Resko, provided a response to your request on June 29, 2017, one day after your request. Although Ms. Resko sent the response to an email address that you had communicated with the Village from as recently as

¹ This includes your July 28, 2017 emails, a July 31, 2017 email (inclusive of attachments) from your attorney in your pending Chancery Court action against the Village, and a July 31, 2017 email from the Village’s Town Chair.

February 22, 2017, you have advised that you “do not use” that email address.² In any event, you are now in receipt of the Village’s response to your request. As such, while we agree that the Village should have sent its response to the email address associated with your initial request to the Village, we do not believe that any further remediation is warranted under the circumstances.³

This determination is limited to the single issue raised in your petition, which is whether the Village violated FOIA by failing to provide a timely response to your June 28, 2017 request. As such, we need not address the question of whether the requested information is a “public record” under FOIA. Thus, to the extent you wish to challenge the Village’s response,⁴ you are free submit a new petition.

Very truly yours,



Michelle E. Whalen
Deputy Attorney General

APPROVED:



Aaron R. Goldstein
State Solicitor

cc: LaKresha S. Roberts, Chief Deputy Attorney General (via email)
Edward Rosenthal, Esq. (via email)
John Work, Esq. (via email)
Denise Nordheimer, Esq. (via email)
Jeffrey Politis (via email)
Elizabeth Resko (via email)

² We note that, despite multiple responsive emails to this Office regarding this matter, you have failed to specifically allege that the email address is not yours.

³ See *Del. Op. Att’y Gen.* 16-IB22, 2016 WL 6684919, at *2 n.5 (Oct. 24, 2016) (concluding that public body’s explanation that it inadvertently sent FOIA response to previous address was, at most, a technical violation for which no remediation would be required because it is clear that the requesting party received the public body’s response).

⁴ We note that you have stated that the specific information that you requested is not available on the Registration Committee’s website. However, based upon Ms. Resko’s correspondence, which directed you to a website containing “public records of [the] registration committee,” it appears that the Village’s position may be that the requested information is not a “public record” subject to disclosure under FOIA.